Fostering More Effective Non-Traditional Maritime Security Cooperation in Southeast Asia

Maritime Security and Coastal Surveillance Indonesia

24-25 April 2018, Jakarta, Indonesia

Zhen Sun
Research Fellow, Centre for International Law

1. Non-Traditional Maritime Security in Southeast Asia
   Situation and Prevalence
2. Existing Multilateral Cooperation
   ASEAN Framework
   ReCAAP / Malacca Straits Patrols / Information Fusion Center / Sulu-Sulawesi Seas Patrol
3. Gaps in Utilising International Agreements
   Crime-Related Treaties
   Drug-Related Treaties
   Terrorism-Related Treaties
4. Key Recommendations
## 1. Non-Traditional Maritime Security in Southeast Asia

<table>
<thead>
<tr>
<th>Traditional Maritime Security</th>
<th>Non-Traditional Maritime Security</th>
<th>Maritime Safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Owned or Military Vessels</td>
<td>• Piracy and Armed Robbery against Ships</td>
<td>• Safety of Navigation</td>
</tr>
<tr>
<td>Threat to Use of Force</td>
<td>• Maritime Terrorism</td>
<td>• Design, Construction, Manning, Equipment</td>
</tr>
<tr>
<td>Military Battle or War</td>
<td>• Trafficking of Drugs</td>
<td>• Rules of the Road</td>
</tr>
<tr>
<td></td>
<td>• Human Trafficking and Smuggling of Migrants</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Illegal Trade of Arms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• IUU Fishing</td>
<td></td>
</tr>
</tbody>
</table>
1.1 Piracy and Armed Robbery against Ships

Location of incidents reported in 2017

NUMBER OF INCIDENTS

ReCAAP ISC Annual Report 2017
1.2 Maritime Terrorism


Canadian hostage in Philippines 'executed' by ISIS 2015. http://www.dailymail.co.uk

Abducting of crew from ships in the Sulu-Sulawesi/Celebes Seas and waters off Eastern Sabah

Map 2 – Approximate location of incidents (March 2016–March 2017)
1.3 Trafficking of Drugs

‘Golden Triangle’ - Opium
Southeast Asia States are source countries, transit sites, and/or destinations of illicit drugs.

East and South-East Asia became the leading sub-regions for methamphetamine seizures worldwide in 2015.

UNODC, World Drug Report 2017
1.4 Human Trafficking and Smuggling of Migrants

Rohingya Refugee Crisis:

- The Rohingya Muslims in Rakhine are a minority group that are not officially recognised as one of the ethnic groups in Myanmar.

- Since 2014, about 95,000 people have set off from the coasts of Myanmar and Bangladesh to Malaysia, Indonesia, the Philippines and Thailand by rickety boats via the waters of the Andaman Sea and the Strait of Malacca.

Strait Times 1 February 2016
1.5 Illegal Trade of Arms

Small Arms Trafficking:
- Manufacturing
- Importation
- Exportation

Connection with other types of illegal activities at sea:
- Piracy & armed robbery
- Smuggling of people
- Smuggling of drugs
- Maritime terrorism

http://piratical.pbworks.com; http://www.worldpolicy.org;
1.6 Illegal, Unreported and Unregulated (IUU) Fishing

IUU Fishing costs Indonesia USD 3b annually
- Enormous area of fishing ground
- Lack of surveillance
- Large number of small vessels
- By both foreign & domestic vessels

Connection with other types of crimes at sea:
- Human trafficking and smuggling of migrants
- Smuggling of drugs/arms/other controlled goods

Indonesia has blown up over 350 fishing boats that were caught illegally fishing in its waters since October 2014 when President Joko Widodo called for tougher action against poachers.

http://www.straitstimes.com/asia/se-asia/indonesia-blows-up-and-sinks-another-81-fishing-boats-for-poaching
1.7 Intentional & Unlawful Damage to the Marine Environment

INTERPOL

- Operation 30 Days at Sea
  Asia Pacific Operational Planning Meeting

- Strategic discussion and call for action to address marine pollution in the Asia-Pacific region

- ‘Pollution Crime’

http://www.chinadaily.com.cn/world/2010-04/06/content_9688156.htm
2. Existing Multilateral Cooperation

- **Common challenges faced by SEA states**
  - All non-traditional maritime security threats have deep root causes on land, including poverty, domestic violence and conflicts, and development gaps
  - Lack of maritime surveillance and enforcement capabilities

- **Existing cooperation is either region-based or issue-based**
  - ASEAN Framework
  - ReCAAP
  - Malacca Straits Patrols
  - Sulu-Sulawesi Seas Patrol
  - Information Fusion Center
2.1 ASEAN Framework – **Overview**

**Establishment:** 8 August 1967 in Bangkok, Thailand

**Member States:** Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam [Timor-Leste]

**Aims and Purposes:**

- To promote regional peace and stability
- To promote active collaboration and mutual assistance on matters of common interest
### 2.1 ASEAN Framework – Legal Dimension

<table>
<thead>
<tr>
<th>Soft Law</th>
<th>Hard Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999 Plan of Action to Combat Transnational Crime</td>
<td>2007 ASEAN Convention on Counter Terrorism</td>
</tr>
<tr>
<td>2002 AMMTC Work Programme to Implement the 1999 Plan of Action</td>
<td>2015 ASEAN Convention against Trafficking in Persons, Especially in Women and Children</td>
</tr>
<tr>
<td>2003 ASEAN Concord II</td>
<td></td>
</tr>
<tr>
<td>2004 Vientiane Action Programme</td>
<td></td>
</tr>
<tr>
<td>2009 ASEAN Political-Security Community Blueprint</td>
<td></td>
</tr>
<tr>
<td>2015 Kuala Lumpur Declaration in Combating Transnational Crime</td>
<td></td>
</tr>
<tr>
<td>2015 ASEAN Political-Security Community Blueprint 2025</td>
<td></td>
</tr>
</tbody>
</table>
2.1 ASEAN Framework – Sectorial Bodies

- Ministerial Meeting on Transnational Crime (AMMTC)
- Senior Officials Meeting on Transnational Crime (SOMTC)
- Law Ministers Meeting (ALAWMM)
- Senior Law Official Meeting (ASLOM)
- Defence Ministers Meeting (ADMM)
- Defense Senior Officials Meeting (ADSOM)
- Transport Ministers’ Meeting (ATM)
- Maritime Transport Working Group
- ASEAN Maritime Forum (AMF - EAMF)
2.1 ASEAN Framework – *External Cooperation*

- ASEAN Regional Forum (ARF)
- ASEAN Plus Three - China, Japan, and South Korea (APT – AMMTC + 3)
- ASEAN Plus China (AMMTC + China)
- ASEAN declarations for cooperation to combat international terrorism with Australia, Canada, the European Union, India, Japan, Republic of Korea, New Zealand, Pakistan, Russian and the United States
2.2 ReCAAP – Overview

- The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (2006)
- 20 Contracting Parties: Australia, Bangladesh, Brunei, Cambodia, China, Denmark, India, Japan, Republic of Korea, Laos, Myanmar, the Netherlands, Norway, the Philippines, Singapore, Sri Lanka, Thailand, United Kingdom, United States, and Viet Nam
- Information Sharing Centre (ReCAAP ISC) based in Singapore
2.2 ReCAAP – Main Activities

- **Information Sharing**
  - Focal Points of Contracting Parties
  - Issue warnings and alerts to shipping industry
  - Facilitate the responses by the law enforcement agencies of littoral States
  - Publish periodical reports, guidelines, and special reports

- **Capacity Building**
  - Technical assistance
  - Workshops and training programme to share experiences and best practice

- **Cooperative Arrangements**
  - Request for cooperation among contracting parties
  - Promote cooperation with other regional and international organisations to share information and best practices
## 2.3 Malacca Straits Patrols (MSP)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td><strong>Malacca Straits Sea Patrol (MSSP)</strong> launched by Indonesia, Malaysia and Singapore</td>
</tr>
<tr>
<td>2005</td>
<td>&quot;<strong>Eyes-in-the-Sky (EiS)</strong>&quot; combined maritime air patrols initiative launched; Thailand joins as an observer</td>
</tr>
<tr>
<td>2006</td>
<td>Signing of the Malacca Straits Patrol Joint Co-ordinating Committee; Terms of Reference and Standard Operating Procedures; Malacca Straits Patrol <strong>Intelligence Exchange Group (IEG)</strong> launched</td>
</tr>
<tr>
<td>2008</td>
<td>Inaugural Malacca Straits Patrol Information Sharing Exercise conducted; Thailand becomes a full member of the Malacca Straits Patrol</td>
</tr>
<tr>
<td>2010</td>
<td>2nd Malacca Straits Patrol Information Sharing Exercise</td>
</tr>
<tr>
<td>2011 - present</td>
<td>Annual Malacca Straits Patrol Exercise</td>
</tr>
</tbody>
</table>
2.4 Sulu-Sulawesi Seas Patrol

- The one million square kilometer tri-border area has long been a hub for transnational organized crime and terrorist threats
- 19 June 2016 Joint Declaration on Immediate Measures to Address Security Issues in the Maritime Areas of Common Concern among Indonesia, Malaysia, and the Philippines
- 20 July 2017 Inauguration of trilateral maritime patrol and air patrol
- Established Maritime Command Centres to coordinate the joint patrol, IFC also facilitates the sharing of information and intelligence
- Establishment of transit security corridors
- There have been no attacks on shipping to kidnap crew since April 2017
2.5 Information Fusion Center

- Established in 2009, a regional maritime security centre hosted by Singapore Navy to facilitate information sharing and collaboration between its partners on piracy, sea robbery, weapons proliferation, maritime terrorism, IUU fishing, irregular human migration, as well as contraband and drug smuggling.

- Has linkages to 71 operation centres from 38 countries, hosted 111 International Liaison Officers (ILO) from 23 countries.

- Main activities: information sharing through database, reports and meetings; administer a regional voluntary community reporting system; provides security updates and advisories to shipping industry; conducts exercises/courses/visits;
3. Gaps in Utilising International Agreements

- **Crime-Related Treaties**

- **Drug-Related Treaties**
  - 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

- **Terrorism-Related Treaties**
  - 1979 Int’l Convention against the Taking of Hostage
  - 1999 Int’l Convention for the Suppression of the Financing of Terrorism
## 3.1 Ratification in SEA

<table>
<thead>
<tr>
<th>Parties</th>
<th>Trans. Org. Crime</th>
<th>Traf. in Person</th>
<th>Smug. of Migrants</th>
<th>Traf. in Firearms</th>
<th>Drugs</th>
<th>Hostage</th>
<th>Financing of Terrorism</th>
<th>SUA 1988</th>
<th>SUA 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>2009</td>
<td>2009</td>
<td>2009</td>
<td>X</td>
<td>1999</td>
<td>X</td>
<td>2006</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Thailand</td>
<td>2013</td>
<td>2013</td>
<td>X (s)</td>
<td>X</td>
<td>2002</td>
<td>2007</td>
<td>2004</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
3.2 Terrorism-Related Treaties Common Provisions

- Define the offence
- Require states to make the offence a crime under their national law
- Require states to establish jurisdiction over the offence when they have a connection to it
- Require states parties to take custody of any alleged offender who is present in their territory
- Require states with custody to either “extradite” or “prosecute” the alleged offender
- Require States to render mutual legal assistance in any legal proceedings
Article 3 Any person commits an offence if that person unlawfully and intentionally:

- The seizure of ships by force
- Acts of violence against persons on board ships
- Destroys or damages the ship, its cargo, or maritime navigation facilities
- The placing of devices on board a ship which are likely to destroy or damage it

With the effect of endangering the safe navigation of the ship
3.3 2005 SUA – Unlawful Acts

**Article 3bis** Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

- uses of weapon, discharges hazardous or noxious substance, uses a ship in a manner that causes death or serious injury or damage

(b) transports on board a ship:

- any explosive or radioactive material, BCN weapon, or any fissionable materials, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the intimidating purpose
Article 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.
Article 6 Each State Party shall take such measures as may be necessary to establish its jurisdiction:

- Flag state of the targeted ship
- State under who’s territory the offence took place, including the territorial sea
- Nationality state and residential state of the perpetrators
- Nationality state of the affected persons
- Targeted state that were compelled to do or abstain from doing any act
Article 6(4)

- Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3bis, 3ter and 3quater in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
4. Key Recommendations

Areas of Focus:

- Improve coordination among various agencies
- Addressing the root causes of maritime crimes on land
- Interrupting criminal activities at sea: cooperation in information sharing, joint patrol, mutual legal assistance at all levels pertaining to criminal proceedings

Actions:

- Ensure there is a special ASEAN body/forum to review the relevant international treaties
- Encourage states to ratify and implement relevant international treaties that are of common interests to ASEAN states
THANK YOU

Dr Zhen Sun
Research Fellow
Centre for International Law
cilsz@nus.edu.sg